

Federal Court



Cour fédérale

**Date: 20160420**

**Docket: IMM-2367-15**

**Citation: 2016 FC 440**

**Ottawa, Ontario, April 20, 2016**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**CAN HUI LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is a 30 year-old citizen of China. He arrived in Vancouver, Canada, in September 2009. In 2010, he moved to Toronto and began to study accounting at Seneca College, earning a diploma in 2011. In February 2014, he made an application for permanent residence. In it, he lists his current and intended occupation as “welder.” In particular, he states that he worked as an apprentice welder at Bethel Welding Ltd. in Toronto from October 2012 to December 2013. His application includes a letter, dated December 23, 2013, from his supervisor

at Bethel Welding Ltd., Aaron Gao. In the letter, Mr. Gao states, among other things, that the applicant (referred to as “Canhui (Derek) Liu”) currently works as a welder apprentice and is employed full-time (44 hours per week) as a fixed-term employee.

[2] On November 5, 2014, an officer sent the applicant a procedural fairness letter by email expressing “serious concern(s)” about his application, particularly his claim to have worked as a Welder:

On November 5, 2014 we contacted Mr. Aaron Gao at Bethel Welding Ltd. Mr. Gao confirmed that you were originally employed as a bookkeeper but requested training as a welder. After 2-3 months as a Welder Apprentice, Mr. Gao was informed by the company foreman that you lacked the necessary skills to continue as a welder. Mr. Gao further stated that you then returned to the company office and continued employment as a bookkeeper. Based on this information, I am not satisfied that you have the experience as a Welder, NOC 7237.

[3] On the same day that the letter was sent, the following note was made in the respondent’s Global Case Management System [GCMS]:

\*\*\*FILE SENT FOR INVESTIGATION. DO NOT REVEAL THIS INFORMATION TO CLIENT AT THIS TIME\*\*\* Spoke to Aaron Gao, Operations Manager, signatory on LOE. Mr. Gao could not remember the exact dates the PA was hired but said it was in 2012 and that he worked for around 1 year. I asked him about the company. He said that right now he has 2-4 employees because it is slow but last year he had 5-10 and then 2-4. I asked him how many apprentices he has. Mr. Goa seemed to struggle with the concept of apprentice. Mr. Gao then stated that he Derek had been hired as a bookkeeper but asked to be trained as a welder. After 2-3 months the foreman told Mr. Gao that the PAs welding skills were not good enough. PA was then returned to the office as a bookkeeper. I asked again how long PA worked as a welder. Mr. Gao said 2-3 months. PA has since left the company.

[4] The applicant responded to the officer's email of November 5, 2015, including a second letter from Mr. Gao, as well as paycheques and several photos. In the letter, Mr. Gao states that he received a call from an immigration officer while he was driving and said that it would be better if the officer called back at another time. However, the officer continued the conversation and asked about the applicant's work history. Mr. Gao states that he was driving and responded to the officer's questions quickly and inaccurately. Mr. Gao further states that, after the telephone call, and after being told by the applicant that he had provided incorrect information, he checked his records and "realized that I had mistakenly mixed the Derek Liu's job history with another employee whose name is Derek due to the distracted driving as well as the company's high employment turnover; furthermore our company had several employees named Derek, so under the driving condition, I could barely distinguish them."

[5] Mr. Gao concludes that "I would like to correct my previous mistakes and certify that Canhui (Derek) Liu was a full time Welder Apprentice at Bethel Welding Ltd from October 2012 to December 2013. During his working period, he worked for 44 hours per week, and his wage was \$15 per hour."

[6] On May 1, 2015, the applicant was sent a letter rejecting his application for permanent residence. In the letter the officer stated that he or she was "not satisfied that you meet the skilled work experience requirements" for the Canadian Experience Class. The officer explains that:

I note that a phone call was placed to your employer on 05NOV2014 to confirm details of your employment. Mr. Aaron Gao the signatory of your employment reference letter and Operations Manager of Bethel Welding responded to questions

regarding your employment. He stated that you were hired as a Bookkeeper and only work 2-3 months in the position as a Welder. I do note that in response to these concerns, you provided an additional employment reference letter from Mr. Gao which states that he had confused you with another employee also named Derek and that he was also distracted because he was driving. Although I acknowledge that your employer may have been contacted at an inconvenient time, I find it inconceivable that he provided me with incorrect details pertaining to your employment. [emphasis added]

The officer concluded that he was not satisfied that the applicant had the necessary experience as a welder to meet the requirement for the Canadian Experience Class program and refused his application.

### **Issues**

[7] The applicant raises two issues. Firstly, he claims that the officer breached procedural fairness by failing to provide him with details of his or her conversation with Mr. Gao, and by failing to interview him about the inconsistencies between his own account of his employment and that provided by Mr. Gao to the officer during their conversation. Secondly, he claims that the officer erred in concluding that he did not have one year of skilled work experience based on the telephone call with Mr. Gao.

[8] The first issue is to be reviewed on a standard of correctness, while the second issue is to be reviewed on a standard of reasonableness: *Mehfooz v Canada (Citizenship and Immigration)*, 2016 FC 165, 263 ACWS (3d) 458 at paras 9-11.

## Analysis

### A. *Procedural Fairness*

[9] The procedural fairness letter did not disclose all of the details of the officer's conversation with Mr. Gao. Details of this conversation that are in the GCMS notes but not the letter include the number of employees that Mr. Gao said he had at various times, and that Mr. Gao seemed to struggle with the concept of an "apprentice." The GCMS notes make no mention of some of the details attested to by Mr. Gao in his second letter, including that he was driving during the conversation and asked the officer to call back at another time.

[10] The applicant claims that it was unfair for the officer to ask the applicant to respond to information gleaned from his or her conversation with Mr. Gao, without providing more details of that conversation. Specifically, the applicant writes that:

CIC has not provided anything in writing with regard to the actual *conversation* held with the applicant's Canadian employer. The applicant is "left in the dark" with regard to this critical conversation, questions posed, full answers provided, his employer's proficiency in English, etc. [emphasis in original]

[11] The officer was obliged to keep a complete record of the "questions posed" and "full answers provided." Although the officer did not disclose all of the details contained within the GCMS notes, the officer did disclose the only important and relevant detail: namely, that Mr. Gao said that the applicant had only worked 2-3 months as a welder, and was then transferred back to his bookkeeping job. A position, the respondent notes, that is more in keeping with the applicant's training.

[12] Similar to the situation of the applicant in *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 419, 453 FTR 297 [*Sidhu*] at para 15, the applicant here does not establish what additional submissions he would have made had he been told about the details in the GCMS notes that were not mentioned in the letter. The applicant was not “left in the dark,” but rather was given a reasonable opportunity to respond to the case against him, one that he took full advantage of. As found in *Sidhu*, there was no breach of procedural fairness on this basis.

[13] The applicant also claims that the officer acted unfairly by failing to interview him about the inconsistency between his own account of his employment and that provided during the officer’s conversation with Mr. Gao. The applicant submits that an interview was required because an issue of credibility had been raised regarding the applicant’s claim that he had worked as a welder for a year. In oral submissions, counsel forcefully argued that the officer owed him a duty to “grill” him about the differences in accounts.

[14] Again, I disagree. It is true that, in a broad sense, the officer’s conversation with Mr. Gao raised issues about the applicant’s credibility. It did so in the same way that any evidence that contradicted the applicant’s account would have put his credibility into play. However, if, as the applicant submits, the applicant’s account is right and Mr. Gao’s account is wrong, then it is difficult to see what the applicant could have said, in an interview, that would have shed light on why Mr. Gao made the mistake that he did. The best evidence that the applicant could have provided was the evidence which he did provide; namely, a statement from Mr. Gao explaining the inconsistency between his letter and what he said over the phone.

[15] The facts in this case are similar to those in *Bhamra v Canada (Minister of Citizenship and Immigration)*, 2014 FC 239, 239 ACWS (3d) 169 [*Bhamra*], cited by the respondent. In that case, a visa applicant provided a supporting statement that purported to be from an employer. An officer called a telephone number listed on the statement, and spoke to a person claiming to be the employer. The employer denied that the applicant had ever worked for him. The officer sent a procedural fairness letter detailing the concerns arising from the telephone call. In response, the applicant provided a further supporting statement from the employer, attempting to explain the inconsistency. This explanation was rejected and the visa was denied. On judicial review, the applicant claimed that his credibility had been put in issue.

[16] This submission was rejected by the Court, which found at paragraph 42 that:

The Applicant was provided with a fairness letter and given every opportunity to resolve the misrepresentation issue in his own favour. What he offered was contradictory letters and an unbelievable and entirely unsubstantiated reason for the contradiction. As Justice Mandamin pointed out in [*Chen Guo Hui v Canada (Minister of Citizenship and Immigration)*], 10 December 2010, IMM-2357-10 (FC)], quoting Justice Zinn in [*Ni v Canada (Minister of Citizenship and Immigration)*], 2010 FC 162] [*Ni*], at para 18:

I agree with the applicant that a high degree of fairness is required in misrepresentation determinations. This is why the officer sent the applicant a procedural fairness letter expressly raising his concerns and permitting the applicant to file a response. This is what fairness required in the circumstances and the officer met that burden. It does not require that the officer blindly accept the response to the fairness letter without question. The officer is required to assess whether the response satisfies and alleviates his concerns. That decision is reviewed, as stated, on the reasonableness standard.

It is the fairness letter that, in this context, provides the Applicant with a meaningful opportunity to respond and present his case fully in accordance with *Baker* principles. The Applicant has not shown me that he could not have presented any response he wished to the fairness letter.

[17] The reasoning in *Bhamra* applies to the present case.

B. *Reasonableness of Decision*

[18] The applicant claims that the officer's decision was unreasonable because he or she failed to provide any reason for preferring the evidence from the telephone conversation with Mr. Gao to Mr. Gao's subsequent letter, in which he explained that he had made a mistake.

[19] The issue before the officer was whether the applicant had acquired "at least one year of full-time work experience" pursuant to section 87.1(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The officer was faced with evidence from a telephone conversation with Mr. Gao, in which he clearly stated that the applicant only had 2-3 months of relevant experience. The officer was also faced with a subsequent letter from Mr. Gao, in which he explained that his earlier statement was in error. In deciding to prefer the evidence from the telephone conversation, the officer stated that "[a]lthough [Mr. Gao] may have been contacted at an inconvenient time, I find it inconceivable that he provided me with incorrect details pertaining to your employment." In other words, the officer acknowledged Mr. Gao's subsequent explanation but did not accept it as a sufficient explanation.



[20] It is the officer's job to weigh the evidence and it was open to the officer to prefer the evidence from the telephone conversation to the subsequent explanation. It may have been preferable for the officer to have explained this preference in more detail. However, the officer's failure to do so is not a free-standing basis for judicial review: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 14. Nor does it undermine the justification, transparency, and intelligibility of the officer's decision so as to render it unreasonable.

[21] It is not the function of this reviewing court to reweigh the evidence: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 61, and that, effectively, is what the applicant asks me to do.

[22] No question for certification was proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2367-15

**STYLE OF CAUSE:** CAN HUI LIU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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